

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION SUPERIOR COURT

CAUSE NO. 490020608 PL 032801

STATE OF INDIANA,  
  
Plaintiff,

v.

HOLIDAY ENTERPRISES INC.  
and  
HOLIDAY INK, INC.  
  
Defendants.

**FILED**

46

AUG - 9 2006

*Doris Ann Miller*  
CLERK OF THE  
MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Eric Jackson, petitions the Court pursuant to the Indiana Business Opportunity Transactions Act, Ind. Code § 24-5-8-1 et seq., and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 et seq., for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

FACTS

1. The Defendant, Holiday Enterprises Inc., is a foreign corporation with its principal place of business located at 2144 Buford Highway, Suite 211-A, Buford, GA.
2. The Defendant, Holiday Ink, Inc., is a foreign corporation with its principal place of business located at 2589 Ivy Plantation Drive, Buford, GA.
3. On or about November 1, 2004 Holiday Ink, Inc., purchased Holiday Enterprises Inc.
4. Since at least August 2004, the Defendants have engaged in the business of selling a business opportunity, whereby investors would sell replacement ink and toner cartridges, to the general public and have engaged in the solicitation of said business opportunity within the State

of Indiana.

5. The Defendant, Holiday Enterprises Inc., solicited and entered into contracts for the sale of said business opportunity with Indiana investors, including, but not limited to Stephen Cook ("Cook") of Osceola, Indiana, who paid Fifteen Thousand Nine Hundred Ninety-Five Dollars (\$15,950.00) to the Defendant on or about August 10, 2004. A copy of the contract is attached as Exhibit 'A'.

6. Holiday Enterprises, Inc.'s contract with Cook failed to include to the following information:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. the terms and conditions of payment;
- c. a detailed description of any services that the Defendant undertakes to perform for the investor;
- d. a detailed description of any training that the Defendant undertakes to provide to the investor;
- e. the approximate delivery date of any goods the seller is to deliver to the investor; and
- f. a statement of the investor's thirty (30) day right to cancel the contract.

7. The Defendant, Holiday Ink, Inc., solicited and entered into contracts for the sale of said business opportunity with Indiana investors, including, but not limited to Scott and Lorry Garber ("the Garbers") of Claypool, Indiana, who paid Twenty Four Thousand Nine Hundred Fifty Dollars (\$24,950.00) on or about March 21, 2005. A copy of the contract is attached as Exhibit 'B'.

8. Holiday Ink, Inc.'s contract with the Garbers failed to include to the following information:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. the terms and conditions of payment;
- c. a detailed description of any services that the Defendant undertakes to perform for the investor;
- d. a detailed description of any training that the Defendant undertakes to provide to the investor;
- e. the approximate delivery date of any goods the seller is to deliver to the investor; and
- f. a statement of the investor's thirty (30) day right to cancel the contract.

9. After the initial purchase, the Garbers purchased additional ink cartridges from the Holiday Ink, Inc., for a price of Fifteen Thousand Dollars (\$15,000.00).

10. The Defendants represented to Cook and the Garbers that a market existed for selling the replacement ink cartridges and that they could receive a profit by purchasing the business opportunity.

11. The Defendants did not provide Cook and the Garbers with a copy of a disclosure document containing the information required by Ind. Code § 24-5-8-2.

12. The Defendants did not obtain a surety bond in favor of the State of Indiana for the use and benefit of investors prior to their transactions with Cook and the Garbers.

13. The Defendants did not file a disclosure statement or bond with the Consumer Protection Division of the Indiana Office of Attorney General or pay the initial filing of Fifty

Dollars (\$50.00) prior to their transactions with Cook and the Garbers.

14. On or about September 26, 2005, a copy of the complaint form that the Garbers filed with the Indiana Office of Attorney General, wherein they requested a refund from the Defendant, was mailed to the Holiday Ink Inc.

15 The Defendants' offer of selling display racks and ink cartridges to investors who would then sell the cartridges to others is a "business opportunity" as defined by Ind. Code 24-5-8-1.

#### COUNT I - VIOLATIONS OF THE BUSINESS OPPORTUNITY TRANSACTIONS ACT

16. The Defendants' failure to provide Indiana investors, including but not limited to Cook and the Garbers, with the disclosures required by Indiana law at least seventy-two (72) hours before the earlier of the investors' execution of a business opportunity contract with the Defendants or receipt of any consideration by the Defendants, as referred to in paragraph 11 above, is a violation of Ind. Code § 24-5-8-2.

17. The Defendants' failure to obtain a surety bond in favor of the State of Indiana prior to offering to sell their business opportunity to Indiana investors, as referred to in paragraph 12 above, is a violation of Ind. Code § 24-5-8-3.

18. The Defendants' failure to file a copy of the disclosure statement and surety bond and pay the filing fee required by Indiana law with the Consumer Protection Division of the Office of the Attorney General prior to placing any advertisement or making any representation to any Indiana investor about said business opportunity, as referred to in paragraph 13 above, is a violation of Ind. Code § 24-5-8-4.

19. The Defendants' failure to include the information detailed in paragraphs 6 & 8 above is a violation of Ind. Code § 24-5-8-6(b).

20. Due to the foregoing violations of Ind. Code 24-5-8-2, Indiana investors, including but not limited to Cook and the Garbers, have a statutory right to cancel their business opportunity contracts with the Defendants in accordance with Ind. Code § 24-5-8-15.

21. Due to foregoing violations of Ind. Code §24-5-8-6(b) Indiana investors, including but not limited to the Garbers, have a statutory right to void their business opportunity contracts with the Defendant in accordance with Ind. Code § 24-5-8-16.

22. In accordance with Ind. Code § 24-5-8-20 the Defendants' violations of Indiana's Business Opportunity Transactions Act, Ind. Code 24-5-8-1 et seq. are violations of Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 et seq.

## COUNT II – KNOWING VIOLATIONS OF THE BUSINESS

### OPPORTUNITIES TRANSACTIONS ACT

23. The Defendants' violations of Indiana's Business Opportunity Transactions Act, Ind. Code § 24-5-8-1 et seq. were knowing violations.

### IRREPARABLE HARM

24. The deceptive acts set forth above will continue and will cause irreparable injury unless the Defendants are enjoined from engaging in further conduct which violates Ind. Code § 24-5-8-1 et seq., and § 24-5-0.5-1 et seq.

### RELIEF

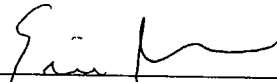
WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter a judgment against the Defendants and order the following relief:

- a. A permanent injunction pursuant to Ind. Code § 24-5-8-18 and Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants, their agents, representatives, employees, successors, and assigns from engaging in conduct in violation of Ind.

Code § 24-5-8-1 et seq., or Ind. Code § 24-5-0.5-1 et seq.;

- b. Cancellation of the Defendants' business opportunity contracts with Indiana investors, including but not limited to Cook and the Garbers, pursuant to Ind. Code § 24-5-8-15 and Ind. Code § 24-5-0.5-4(d);
- c. Voiding the Defendants' business opportunity contracts with Indiana investors, including but not limited to the Garbers, pursuant to Ind. Code § 24-5-18-16.
- d. Restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2) and (d), in the amount of all consideration paid to the Defendants by Indiana investors, including but not limited to the following:
  - 1. Fifteen Thousand Nine Hundred Ninety-Five Dollars (\$15,950.00) on behalf of Stephen Cook; and
  - 2. Thirty Nine Thousand Nine Hundred and Fifty Dollars (\$39,950.00) on behalf of Scott and Lorry Garber.
- e. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- f. Civil penalties pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and
- g. All other proper relief.

Respectfully submitted,  
Steve Carter  
Attorney General of Indiana  
Atty. No. 4150-64

By:   
Eric Jackson  
Deputy Attorney General  
Atty. No. 19415-49

Office of the Attorney General  
Indiana Government Center South, 5<sup>th</sup> floor  
302 W. Washington Street  
Indianapolis, IN 46204  
(317) 233-3987

ELJ/1585

CORPORATE OFFICE  
2144 BUFORD HWY  
SUITE 211-A  
BUFORD, GA 30518  
Toll Free: (800) 433-9866  
Fax: (770) 614-9681

# HOLIDAY ENTERPRISES, INC

ALABAMA OFFICE  
2227 DRAKE AVENUE  
SUITE 14  
HUNTSVILLE, AL 35805  
Toll Free: (866) 343-5700  
Fax: (256) 881-1614

## STANDARD PURCHASE ORDER

Buyer's Name: Steve Cook Date: 8/10/04  
Address: 500 Shepherd's Cove DR.  
City: Osceola State: FL Zip: 46561  
Home Ph: 574-674-6450 Business Ph: 574-674-6853

QUANTITY ORDERED	ITEM	TOTAL
5 (Fire)	INK Jet Cartridge Display	\$15,950.00
1500	INK Jet Cartridges	
	FREIGHT-FOB ATLANTA, GA	Freight on buyer
	SALES TAX (IF APPLICABLE)	N/A
METHOD OF PAYMENT Credit Union Center	DEPOSIT AMOUNT 8/10/04	\$15,950.00
#17001	BAL. DUE/DATE DUE	

DATE: 8/14/04 BY: Jack Manuel, Pres  
SELLER

DATE: 8/10/04 BY: Steve Cook Steve Cook  
BUYER

Purchaser acknowledges the receipt of all Documents of Seller three (3) days prior to acceptance and deposit of funds and agreed that this sale is subject to the terms on the reverse of this purchase order.





16. Miscellaneous.

- (a) This agreement shall not be binding upon and inure to the benefit of the parties hereto and their successors, but shall not be assignable as herein provided.
- (b) If any term or provision hereunder, or any portion hereof, is held to be invalid or unenforceable it shall not affect any other term or provision hereunder or any part thereof.
- (c) All promises, covenants, agreements, representations and warranties contained herein shall survive the execution and delivery, and the subsequent termination, if this Agreement and the transactions contemplated hereunder.
- (d) This Agreement contains the full, entire and integrated agreement and understanding between "Company" and Distributor with respect to the covenants, promises and agreements herein described and no representations, warranties, provisions, covenants, agreements or understandings, written or oral, not herein contained or referred to shall be of any force or effect. This Agreement may not be modified or amended except in writing signed by both of the parties herein.
- (e) No waiver of such breach of any term of this Agreement shall be effective unless made in writing signed by the party having the right to enforce such breach and no waiver shall be construed as a waiver of any subsequent breach.
- (f) This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date first written above.

COMPANY: HOLIDAY ENTERPRISES, INC.

BY: Clark Maxwell, Pres.

DISTRIBUTOR: Steve Cook

BY: Steve Cook



## HOLIDAY INK DISTRIBUTORSHIP AGREEMENT

THIS AGREEMENT is made this 21 day of March, 2005 by and between Scott & Lorry Garber, with its principal place of business at 5303 E 10005 Claypool Ln 462510 (the "Distributor") and Holiday Ink, Inc. a Delaware corporation with its principal place of business at 2589 Ivy Plantation Drive, Buford, GA 30519 (the "Company").

### INTRODUCTORY STATEMENT

"Company" is engaged in the business of Distributing Inkjet Cartridge products more particularly described below (the "Products"). In accordance with the terms of this Distributorship Agreement (together with all amendments and exhibits hereto, this "Agreement"), Distributor wishes to obtain the exclusive right to distribute and sell the Products (defined as a business arrangement whereby a potential buyer purchases products in pre-packaged units from "Company" in sufficient quantity and arrangement that will help him or her to begin a business selling said products, including the Business Opportunity Programs), during the term of this Agreement and any renewal thereof. "Company" desires Distributor to act as its direct Distributor to market the Products.

NOW, THEREFORE, in consideration of the Introductory Statement, which shall be deemed to be a substantive part of this Agreement, and the mutual promises, covenants, agreements, representations and warranties contained herein, the parties do hereby promise, covenant, agree, represent, and warrant as follows:

#### 1. Rights Granted.

- (a) "Company" hereby appoints Distributor to distribute the Products during the term hereof, and grants Distributor the right to distribute and sell the Products. Distributor hereby accepts such appointment and agrees to act upon the terms and subject to conditions hereinafter contained.
- (b) Agreement is a requirements contract; and shall obligate Distributor to purchase all of its Ink Product from "Company" and preclude Distributor from purchasing, stocking, distributing and selling products purchased, sold or distributed by any other person, or on behalf of any other person, regardless of whether or not such products compete directly or indirectly with the products or any other products of "Company" for display on Holiday Ink racks or under the "Holiday" brand. Violation of this requirement will result in immediate loss of Distributorship and all rights associated with it.



## 2. Products.

- (a) The term "Products" as used in this Agreement, shall mean the Holiday Ink products hereto. The primary unit of measurement shall be in "pieces".

## 3. Territory.

- (a) The term "Territory" as used in this Agreement shall mean within the geographic areas wherein Distributor may operate his/her business only as described in Exhibit A (when appropriate) attached hereto and incorporated by reference herein, including all consulates and United States military installations located within the Territory.

## 4. Term.

- (a) The term of this Agreement shall be for a period of five (5) years from the date hereof (the "Initial Term"), and shall thereafter be automatically renewed from year to year (a "Renewal Term"), unless notice that this Agreement shall not be renewed shall have been given by either party hereto to the other not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

## 5. Obligations of Distributor.

- (a) Distributor shall (1) use its reasonable efforts to promote the sale and to distribute Products, (2) seek to maintain sufficient quantities of each of the Products available so as to meet current demand for each of the Products in the Product line, (3) maintain clean and sanitary conditions on display racks; (4) secure and maintain all necessary licenses and permits required to operate and maintain distributor's business, (5) seek to maintain the quality and integrity of any Products properly delivered to Distributor in conformity with and pursuant to the provisions of this agreement, and not sell or distribute any products which to Distributor's actual knowledge are not of proper quality or age, and (6) comply in all material respects with all statutes, laws and regulations of all federal, state, municipal, territorial and local governmental and regulatory authorities applicable to the distribution and sale of Products. Violation of any of the requirements could result in loss of Distributorship status.

## 6. Orders.

- (a) All orders for Products by Distributor shall be subject to the terms and conditions of this Agreement.
- (b) All orders of Products by Distributor shall be submitted in writing on the form Purchase Order.
- (c) "Company" shall promptly, but in no event later than twenty-five (25) days after the order is received, fill the original order submitted by Distributor. An order shall be deemed to be filled timely when delivered in a conforming manner and otherwise in accordance with the terms and conditions of this



agreement. In the event of any inability by "Company" to fill all or any portion of the Distributor's order within the period prescribed, "Company" shall notify Distributor within twenty-five (25) days after the order is received (such notice to specify the reason for the delay), of that portion of the order that "Company" can fill, and when the remaining portion of such order will be filled. In such event, "Company" shall have the opportunity to cure such breach within a time period reasonable to Distributor under the circumstances, but in no event to exceed twenty (20) days from the date the order is submitted. Distributor may, at its option and without waiver of any rights, take delivery of that portion of the order that "Company" can fill, or may require "Company" to defer delivery until such time as the order shall be filled in full. All re-orders of products, Company shall deliver within five (5) days.

- (d) In the event the terms of any Purchase Order Form and the terms of this agreement shall conflict, the terms of this Agreement shall prevail and control.

#### 7. Relationship between the Parties.

- (a) Distributor acknowledges that the relationship between "Company" and Distributor is vendor and vendee, and that Distributor is, and shall at all times remain, an independent contractor. Distributor, its agents, servants, employees and any sub-distributors shall under no circumstances be deemed agents or representatives of "Company" for any purpose whatsoever, unless otherwise agreed to in writing, and Distributor shall have no authority to enter any contracts or commitments in the name on behalf of "Company", or to bind "Company" in any way. Distributor is not and shall not be deemed to be a franchise of "Company", and Distributor covenants and agrees not to make any representation to any person, express or implied to the contrary.

#### 8. Product Liability Insurance.

- (a) "Company" shall, at its sole cost and expense, carry and maintain in effect at all times during the term hereof a policy or policies of \$1,000,000 product liability insurance with such insurance carrier's coverage and upon such terms and conditions as shall be reasonably acceptable to Distributor.

#### 9. Warranties.

- (a) "Company" hereby expressly represents and warrants to Distributor that each and all of the Products shall, (1) be of first-class quality and conform to all of "Company" specifications and advertising, (2) be pure, wholesome and unadulterated and contain no foreign or deleterious substances, (3) be transportable and storable in the ordinary manner in which similar such products are transported and stored, (4) conform to all applicable standards and regulations promulgated by any and all governmental and regulatory authorities, including the various state, municipal, territorial and local governmental and regulatory authorities, as well as any standards customary and accepted in the industry.



- (b) "Company" hereby expressly makes and confirms all other warranties implied by law and by custom and usage in the trade.

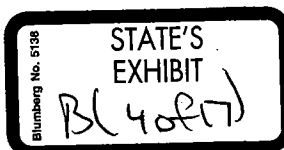
**10. Assignment.**

- (a) Neither this Agreement nor any part hereof or interest herein shall be assignable by either "Company" or Distributor without the prior written consent of the other party, however "Company" will not unreasonably withhold consent.

**11. Default.**

- (a) Any one or more of the following events shall constitute an event of default under this Agreement.

1. The breach of any covenant, agreement, representation or warranty under this Agreement, which breach shall not be cured with fifteen (15) days after notice of such breach shall have been given by the non-breaching party ("Cure Period"), unless such breach of such nature that it cannot reasonably be cured within the Cure Period, in which event, so long as the breaching party shall have commenced the cure of such breach within the Cure Period and thereafter shall have diligently and in good faith continuously exerted its best efforts to cure such breach, then any such breach shall not, during the period such curative action is pursued to be deemed a default hereunder, provided; however, that in the event such breach is the third breach under this Agreement by such party within any 12-month period, then such breach shall constitute an event of default upon giving of notice by the non-breaching party of such breach.
2. The failure of "Company" to cure breach within the time and in the manner provided therein.
3. The bankruptcy of either hereto. For purposes of this Agreement, the term "bankruptcy" shall mean the filing of a petition commencing a voluntary case under the Bankruptcy Code; a general assignment for the benefit of the creditors; an admission in writing by such party of its inability to pay its debts as they become due; the filing of any petition or answer in any proceeding seeking or consenting to, or acquiescence in, any insolvency, receivership, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the filing of any answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against such party in any such proceeding, the seeking or



contesting to, or acquiescence in, the appointment of any trustee in bankruptcy, receiver or liquidator for the business or property of such party, or the commencement against such party of any involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution or like law or statute which case or proceeding is not dismissed or vacated within sixty (60) days.

- (b) Upon the occurrence of an event of default hereunder, the non-defaulting party may at its option immediately terminate this Agreement upon notice to the order party of such termination. The non-defaulting party shall have available to it and may pursue all other rights and remedies under applicable law.
- (c) Any subsequent shipment by "Company" to Distributor of, and any subsequent orders submitted by Distributor to "Company" for, Products, and Distributor's acceptance of any payment for such Products shall not constitute a waiver of any breach hereunder.

## 12. Termination.

- (a) This Agreement shall terminate upon the earliest to occur of any one of the following events:

1. At the expiration of the Initial Term or any Renewal Term after notice of non-renewal pursuant to Section 4 hereof.
2. Upon the occurrence of an event of default under Section (11a) hereof and notice being given under Section (11b) hereof.
3. At any time upon not less than ninety (90) days' notice by Distributor to "Company" terminating this agreement.

- (b) Upon termination of the Agreement:

1. All indebtedness between "Company" and Distributor shall become due and payable.
2. At the election of the "Company", "Company" may cancel, without liability to Distributor all unfilled orders of Distributors, which in accordance with the provisions of this Agreement, had properly not been shipped to Distributor as of the effective date of such termination.
3. Neither party shall have any liability to the other party as a result of or in consequence of any such rightful termination for loss cost or damage directly relating to such rightful termination, including, but not limited to, any loss of future profits, or any expenses incurred or claimed to have been incurred by the other party in reliance upon the continued effectiveness of this Agreement, such as for, among other



things, development of business, procuring customers, expenditures or commitments made in connection with such party's business or for any other such cause, provided; however, that the foregoing shall not be construed to affect any indebtedness then due and owing between the parties and any other rights or remedies of the parties relating to the performance, non-performance or other actions in violation of this Agreement.

### 13. Indemnification.

- (a) Distributor hereby indemnifies and holds "Company" harmless from and against any and all actions, suits, proceedings, claims, losses, liabilities, damages and expenses (including attorney's and expert's fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened) arising out of or in connection with any breach by Distributor of any term, provision, covenant, agreement, representation or warranty contained herein, including, but not limited to, the timely payment of all amounts due and payable to "Company" in respect of any Products ordered hereunder.
- (b) "Company" hereby indemnifies and holds Distributor harmless from and against any and all actions, suits, proceedings, claims, losses, liabilities, damages and expenses (including attorney's and expert's fees and sums reasonably expended in investigation and settlement of litigation, pending or threatened) arising out of or in connection with any breach by "Company" of any term, provision, covenant, agreement, representation or warranty hereunder, express or implied, any and all product liability claims, actions and other proceedings, patent, copyright, trademark, trade name or service mark infringements or claims of infringement and any and all other claims, actions and proceedings against Distributor relating to the Products or relating to or arising out of Distributor's position as "Company's" distributor Products.
- (c) Upon the occurrence of any event giving rise to a right to seek indemnification hereunder, the party seeking indemnification shall give the indemnifying party written notice of such claim, action or proceeding within ten (10) days after it becomes known to such party, provided; however, that the failure to give such notice shall not relieve the indemnifying party of its obligation. The indemnifying party shall, within ten (10) days after receipt of such notice, notify the other party seeking indemnification shall be entitled to take over the defense of the action. Upon proper notification by the indemnifying party of its intention to defend the claim, the indemnified party shall engage in counsel reasonably satisfactory to the indemnified party and its counsel currently informed as to all material aspects of the claim and its investigation and defense. The indemnified party may, in such case, engage counsel to assist in the investigation and defense of the claim, but shall not be entitled to reimbursement for any expenses related to the engagement of such counsel. If the indemnifying party elects not to assume the investigation and defense of the claim, or fails to make any election within the time period provided herein, or if in the reasonable opinion of counsel to the indemnified party, the indemnified party has available to it



defense which are contrary to the interests of the indemnifying party in any such action, then the indemnified party shall be entitled to engage it's own counsel for such investigation and defense, and shall be entitled to the full indemnification therefore.

**14. Notice: Sending and Receipt of Documents.**

- (a) Whenever any notice is required to be given hereunder, or any other document, including any Purchase Order Form, invoice, or other communication or writing is required to be sent by one party hereto and delivered to the other, then such notice or other writing shall be given or sent, and the other party shall be deemed to have received it, if delivered personally on the date such notice is delivered personally, or if mailed on the second business day after mailing, if sent by first-class mail, postage prepaid, and addressed as follows:

*If to Company:*

HOLIDAY INK, INC.  
2589 Ivy Plantation Drive  
Buford, GA 30519

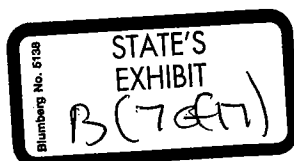
*If to Distributor:*

NAME: L&S Distributors Scott & Lorry Garber  
Address: 5303 E 1000 S  
City/State/Zip: Claypool In 46510

Or to such other address such party may designate as in writing. All such notices and communications shall be in writing, signed by the party giving such notice. Any notice period shall commence on the date such notice is given.

**15. Applicable Law: Jurisdiction and Venue, Service and Process.**

- (a) This Agreement shall be deemed to have been executed in Gwinnett County, Georgia, and shall be governed by construed, interpreted and enforced in accordance with the laws in the state of Georgia. All suits, proceedings and other actions relating to or arising out of this Agreement shall be submitted to the jurisdiction of the courts of the State of Georgia, or the federal district court for the Northern District of Georgia (Atlanta Division) and venue for any such suits, proceedings and other actions shall be in Atlanta, Georgia. Vendor hereby waives any claim against or objection to jurisdiction and venue in the courts of the State of Georgia in the city of Atlanta, Georgia or the federal district for the Northern District of Georgia (Atlanta Division).
- (b) "Company" hereby irrevocably appoints the Secretary of the State of Georgia as its true and lawful attorney within the State of Georgia to receive service of process in any suit, action or proceeding against it arising out of or relating to this Agreement and hereby consents and agrees that service upon the Secretary of the State of Georgia shall be of the same force and validity as if served personally upon "Company" in the State of Georgia.





## 16. Miscellaneous.

- (a) This agreement shall not be binding upon and inure to the benefit of the parties hereto and their successors, but shall not be assignable as herein provided.
- (b) If any term or provision hereunder, or any portion hereof, is held to be invalid or unenforceable it shall not affect any other term or provision hereunder or any part thereof.
- (c) All promises, covenants, agreements, representations and warranties contained herein shall survive the execution and delivery, and the subsequent termination, of this Agreement and the transactions contemplated hereunder.
- (d) This Agreement contains the full, entire and integrated agreement and understanding between "Company" and Distributor with respect to the covenants, promises and agreements herein described and no representations, warranties, provisions, covenants, agreements or understandings, written or oral, not herein contained or referred to shall be of any force or effect. This Agreement may not be modified or amended except in writing signed by both of the parties herein.
- (e) No waiver of such breach of any term of this Agreement shall be effective unless made in writing signed by the party having the right to enforce such breach and no waiver shall be construed as a waiver of any subsequent breach.
- (f) This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument.
- (g) Holiday Ink does not have a refund policy. Distributor understands that Holiday's liberal product warranty is not to be construed in any way as a refund policy.
- (h) This agreement is based on each Distributor only selling Holiday Ink products and having Holiday Ink products on display racks. Therefore, any Distributor that does not reorder product from the company during any one hundred eighty (180) day period is subject to loss of the Holiday Ink Distributorship, and all rights associated with it.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date first written above.

COMPANY: HOLIDAY INK, INC.

BY: \_\_\_\_\_

DISTRIBUTOR: LES Distributors

BY: Scott & Lorry Garber



## Web Site Hosting Agreement

THIS WEB SITE HOSTING AGREEMENT ("Agreement") is made and entered into on this 18 day of March, 2005 (the "Effective Date") by and between Scott & Lorry Garber ("Web Site Owner") and Holiday Ink ("Web Site Host").

WHEREAS, Web Site Host provides hosting of web sites to make such web sites accessible by users who are browsing on the Internet.

WHEREAS, Web Site Host maintains servers, software, and other equipment necessary to provide web site hosting services.

WHEREAS, Web Site Owner is the owner of all rights in and to a certain web site as described in Exhibit "A" attached hereto.

WHEREAS, Web Site Owner is the owner of the Internet domain name identified in Exhibit "A" attached hereto which Web Site Owner represents and warrants does not infringe upon the trademark or other proprietary rights of any other party.

WHEREAS, Web Site Owner wishes to have the Web Site Host provide hosting services for its Web Site subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties as set forth in this Agreement, the parties hereby agree as follows:

### ARTICLE I

#### Provision of Web Hosting Services

For the entire term of this Agreement, subject to the terms and conditions set forth in this Agreement, Web Site Host hereby agrees to provide the following web site hosting services (the "Hosting Services") to the Web Site Owner:

1.1 Provide Web Page Owner with no more than 50 megabytes of disc space on the Web Site Host's web site server. Such disc space shall be used solely for the purpose of storing the Web Site and data files that are actively used in connection with the Web Site of the Web Site Owner. Subject to availability in the reasonable discretion of the Web Site Host, the Web Site Owner may secure additional server storage space at the rate of \$15.00 per megabyte per month.



1.2 Provide Web Page Owner with no more than 50 megabytes of monthly data transfer bandwidth. Subject to availability in the reasonable discretion of the Web Site Host, the Web Site Owner may secure additional megabytes of bandwidth per month at the rate of \$15.00 per megabyte per month.

1.3 Provide Web Site Owner with up to 5 POP3 E-mail accounts at a billable rate of \$15.00 per month, plus a one-time setup fee of \$49.00. Additional e-mail accounts may be purchased for \$3.00 per month per additional account.

1.4 Provide access via the Internet to users of Web Site Owner's Web Site, with such access being provided approximately 24 hours per day, with significant downtime only for normal or catastrophic maintenance, hardware or communication problems, replacement or upgrading of system components, normal power outages, and other usual factors that may effect downtime and which are not created by the gross negligence of the Web Site Host. Wherever possible, Web Site Host will communicate expected downtimes to Web Site Owner in advance.

1.5 Provide online access by Web Site Owner to raw log files and various usage statistic related to the Web Site within the capabilities of Web Site Hosts equipment and software.

1.6 Perform and retain backup of the Web Site and all associated data files periodically based on Web Site Host's normal backup schedule and following any significant changes that are made to the Web Site and reported to Web Site Host in writing.

1.7 Host will maintain (2) Two redundant T3 connections to the Internet on diverse backbones.

## ARTICLE II

### Changes To Owner's Web Site

2.1 Web Site Host will provide all necessary changes for replicated websites. Depending on requests some additional fees may apply. Pricing based on request and complexity to accomplish request.

2.2 Web Site Owner may will have access to their replicated site via internet browser using the password to access reports and order activity.



**ARTICLE III****Price and Payment**

3.1 In exchange for the Hosting Services to be provided by the Web Site Host pursuant to the terms of this Agreement, Web Site Owner shall pay a monthly hosting fee of \$60/00 per month. Monthly Hosting Fee is payable in equal monthly installments which are payable on or before the Twentieth (20th) day of each month during the term hereof.

**ARTICLE III****Price and Payment Continued**

3.2 The Hosting Fee shall be solely for the Hosting Services described in this Agreement and shall not pertain to any other services that Web Site Host may provide to the Web Site Owner, including but not limited to technical support, web site development, marketing, search engine placement, advertising, or any other service.

**ARTICLE IV****Representations And Warranties of Web Site Owner**

4.1 Owner represents and warrants to Host that: (a) Owner owns or has the right to use all material contained in the Web Site, including all text, graphics, sound, video, programming, scripts and applets; and (b) the use, reproduction, distribution, and transmission of the Web Site, or any information or materials contained in it, on and from Host's server computer does not: (i) infringe or misappropriate any copyright, patent, trademark, trade secret, or any other proprietary rights of a third party; (ii) violate any criminal laws; (iii) constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity, or violate any other law or regulation.

4.2 Web Site Owner acknowledges the terms of the Digital Millennium Act of 1998 and the obligations on the part of Web Site Host in the event of a notice from any third party that the Web Site infringes upon the rights of any third party. Web Site Owner consents to the Web Site Host following the procedures outlined in the Act in the event of a claimed infringement. Web Site Owner understands and agrees that Web Site host's compliance with the Act may result in the Web Site being taken off line. Web Site Owner indemnifies and holds the Web Site Host harmless from and against any and all damages that may result from the Web Site Host's good faith compliance with the terms of the Act.



**ARTICLE V****Limitations of Warranties and Liability**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, HOST DISCLAIMS ANY AND ALL EXPRESS WARRANTIES. WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. HOST WILL NOT BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SIMILAR DAMAGES, OR, OTHER THAN AS SET FORTH IN THIS AGREEMENT, FOR CLAIMS OF DAMAGES MADE BY ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT WILL HOST'S LIABILITY EXCEED THE TOTAL PRICE, AS DEFINED IN THIS AGREEMENT.

**ARTICLE VI****Right to Monitor and Remove Unacceptable Sites**

Host has the right to monitor the Web Site, and in its sole discretion to remove any content that Host finds objectionable for any reason, without prior notice to Owner.

**ARTICLE VII****Indemnification**

Owner is solely responsible for any liability arising out of or related to the Web Site. Owner agrees to indemnify and hold Host harmless from and against any and all liabilities, losses, damages, costs, and expenses, including reasonable attorney fees and experts' fees, associated with any claim or action brought against Host related to or arising out of the Web Site or Owner's breach of its warranties under this Agreement. This indemnification agreement will survive termination of this Agreement.



**ARTICLE VIII****Term of Agreement**

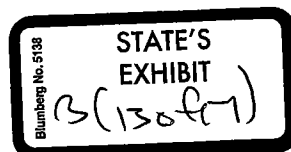
This Agreement will take effect on the Effective Date and remain in effect for a period of (36) months, unless sooner terminated pursuant to the terms hereof.

**ARTICLE IX****Termination**

Either Party may terminate this Agreement, with or without cause, upon 30 days prior written notice to the other party. Termination of this Agreement prior to the end of the term hereof shall not effect the obligation of the Web Site Owner to continue to pay the entire hosting fee hereunder through the entire term hereof.

**ARTICLE X****Miscellaneous**

- 10.1 This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.
- 10.2 This Agreement may be amended at any time and from time to time, but any amendment must be in writing and signed by each Party to be bound.
- 10.3 Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent they act diligently to remedy the cause of the delay or failure.
- 10.4 This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.
- 10.5 If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
- 10.6 This Agreement, including all Exhibits, Appendices, and Attachments, contains the entire agreement of the Parties relating to the rights granted and obligations assumed herein. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be charged.



**ARTICLE X****Miscellaneous Continued**

10.7 This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Georgia (without respect to principles of conflicts of law), and the Parties hereby submit to jurisdiction of and venue in the State of Georgia in any legal proceeding necessary to interpret or enforce this Agreement or any part of this Agreement.

10.8 In any action brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorney fees and all other litigation costs, including expert witness fees, and all actual attorney fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding. The provisions of the preceding sentence shall be severable from the provisions of this Agreement and shall survive the entry of any such judgment. The Parties submit to jurisdiction and venue in the State of Georgia in any legal proceeding arising regarding this Agreement.

10.9 As used in this Agreement, the following terms shall have the meanings ascribed to them below:

- (a) The term "Browser" refers to a program used to provide interactive, graphical access to sites on the World Wide Web.
- (b) The term "Internet" refers to the global network of computers using the TCP/IP protocol for communication.
- (c) The term "Web" refers to the World Wide Web. The Web is a graphical interface used to access sites on the Internet.
- (d) The term "Web Site" refers to a series of interconnected Hypertext Markup Language documents capable of residing on a single host server computer.



IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above intending to be legally bound by the terms hereof.

Scott & Lorry Garber  
[Signatures]

Date

3-18-05





## DOMAIN NAME LEASE AGREEMENT

This Domain Name Lease Agreement (the "Agreement") is entered into as of 3-18-05 between the following two parties in the United States.

The Leaser: Holiday Ink Enterprises  
Legal Address: Ivy Plantation Road, Buford, GA 30519

The Lessee: Scott & Lorry Garber  
Legal Address: 5303 E 1000 S Claypool Ln 46510

WHEREAS, the Leaser, a wholly-owned enterprise registered in United States under the laws of the United States of America. Holiday Ink Enterprises which owns certain domain names (as listed in Appendix 1, collectively as "Domain Names").

WHEREAS, the Lessee, a limited liability company registered in United States, is approved by the relevant governmental authority to carry on the business of value added services;

WHEREAS, the Leasor agrees to Lease the Domain Names to the Lessee in accordance with the terms and conditions set forth herein and the Lessee agrees to accept the Lease on the terms and conditions set forth herein;

NOW, THEREFORE, through mutual negotiations, the parties hereto agree as follows:

### 1. Grant of Lease

#### 1.1 The Domain Names

Upon the terms and conditions hereinafter set forth, the Leasor hereby grants a general Lease to the Lessee to use the Domain Names, and the Lessee hereby accepts the general Lease to use the Domain Names.

#### 1.2 Scope

The use of the Domain Names granted by Leasor to Lessee extends only to the business operated by Lessee. The Lessee agrees that it will not make, or authorize any use, direct or indirect, of the Domain Names by any other means, unless there are opposite stipulations in this Agreement.



## 2. Terms of Payment

The Lessee agrees to pay the Lessor Lease fees and the specified amount of the Lease fees and the form of payment are set forth in Appendix 2.

## 3. Goodwill

The Lessee recognizes the value of the goodwill associated with the Domain Names and the relevant rights, and acknowledges that the Domain Names therein and goodwill pertaining thereto shall be the sole and exclusive property of the Lessor, and that the Domain Names have a secondary meaning in the mind of the public.

## 4. Confidentiality

4.1 The Lessee shall protect and maintain the confidentiality of any and all confidential data and information acknowledged or received by the Lessee by accepting the Lease of the Domain Names from the Lessor (collectively the "Confidential Information"). Upon termination or expiration of this Agreement, the Lessee shall, at the Lessor's option, return Confidential Information to the Lessor or destroy it itself and delete Confidential Information from any electronic devices and cease to use them. The Lessee shall not disclose, grant or transfer any Confidential Information to any third party and will not use the Confidential Information without the Lessor's written consent.

4.2 The parties agree that Section 4.1 shall survive any amendment, expiration or termination of this Agreement.

## 5. Representations and Warranties

5.1 The Lessor represents and warrants as follows:

5.1.1 the Lessor is a company duly registered and validly existing under the laws of the United States of America.

5.1.2 the Lessor has the exclusive ownership of Domain Names;

5.1.3 the Lessee, subject to its business scope and corporate power, has taken necessary steps and obtained full authority and all necessary consents and approvals of any other third party and government to execute and perform this Agreement;

